

NON-EXCLUSIVE LICENSE AGREEMENT

for

HIGH AFFINITY L-PROLINE TRANSPORTER EXPRESSING CELL LINE AND cDNA

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THIS LICENSE AGREEMENT is made and entered into as of this ____ day of _____ 200 __, ("the Effective Date") by and between EMORY UNIVERSITY, with principal offices located at 1599 Clifton Road NE, Fourth Floor, Atlanta, Georgia 30322 (hereinafter referred to as "EMORY"), DUKE UNIVERSITY, having a place of business at Box 90083, Durham, NC 27708-0083, ("DUKE"), (EMORY and DUKE may be jointly referred to as "LICENSOR"), and _____ located at _____ (hereinafter referred to as "LICENSEE").

WITNESSETH

WHEREAS, EMORY is the assignee of all right, title, and interest in inventions developed by the employees of EMORY and is responsible for the protection and commercial development of such inventions; and

WHEREAS, Randall D. Blakeley, Ph.D., currently an employee of Vanderbilt University ("VANDERBILT"), during his course of employment by EMORY and in collaboration with Robert T. Fremeau, Ph.D. and Marc G. Caron, Ph.D. of Duke University ("DUKE") developed certain inventions known as "High Affiinty L-Proline Transporter cDNA" designated as Emory Ref: 92027 and described in US Patent No. 5,580,775 and US Patent No. 5,759,788 ("the Invention") more fully defined herein; and

WHEREAS, Robert T. Fremeau, Ph.D. and Marc G. Caron, Ph.D. have assigned their interests in such inventions to DUKE; and

WHEREAS, this invention was made with support from Howard Hughes Medical Institute ("HHMI") and HHMI has certain rights in the invention under the terms of an agreement previously executed between HHMI and DUKE; and

WHEREAS, HHMI has assigned its rights in the Invention to DUKE; and

WHEREAS EMORY has entered into an agreement with VANDERBILT to allow Dr. Blakely to produce and supply the Invention to parties who request such.

NOW, THEREFORE, for and in consideration of the mutual covenants and the promises herein contained, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms as used herein shall have the following meaning:

1.1 "Affiliate" shall mean any corporation or non-corporate business entity, which controls, is controlled by, or is under common control with a party to this Agreement. A corporation or non-corporate business entity shall be regarded as in control of another corporation if it owns, or directly or indirectly controls, at least fifty (50%) percent of the voting stock of the other corporation, or (i) in the absence of the ownership of at least fifty (50%) percent of the voting stock of a corporation or (ii) in the case of a non-corporate business entity, or non-profit corporation, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or non-corporate business entity, as applicable.

1.2 "Agreement" or "License Agreement" shall mean this Agreement.

1.3 "Field of Use" shall mean use of the Licensed Materials and Licensed Technology for all commercial and non-commercial research and development purposes, including, but not limited to, screening compounds and drug development. Such use is further delineated in Article 5. The Field of Use specifically excludes the use of the Licensed Materials for diagnostic or therapeutic use in humans.

1.4 "Indemnities" shall mean VANDERBILT, DUKE, HHMI and EMORY, and their trustees and directors, employees, and students and their heirs, executors, administrators, successors, assigns, and legal representatives.

1.5 "Licensed Materials" shall mean the human proline transporter cDNA and the HEK-293 cell line expressing the human proline transporter cDNA provided to LICENSEE by EMORY hereunder.

1.6 "Licensed Patents" shall mean all worldwide patents to any subject matter claimed or disclosed in U.S. patent application Serial No. 879,617, filed May 1, 1992, now issued as U.S. Patent 5,580,775 titled "High Affinity, Brain-specific Nucleic Acids Encoding a L-proline Transporter, and Vectors, and Host Cells Comprising" and U.S. patent application Serial No. 753,985 filed December 03, 1996, now issued as U.S. Patent 5,759,788 titled, "High Affinity L-proline Transporter Polypeptides; Antibodies and Immunoassays Specific for Them", all patents claiming priority thereto, and all pending and future continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, extensions (including supplementary protection certificates) and all foreign counterparts of the foregoing.

1.7 "Licensed Technology" shall mean any technical information and know how known to Randy D. Blakely, Ph.D. and pertaining to the Licensed Materials.

1.8 "Licensed Territory" shall mean the world.

ARTICLE 2. GRANT OF LICENSE

2.1 License. LICENSOR hereby grants LICENSEE and its Affiliates (as defined in Article 1.1) a nonexclusive right and license to use the Licensed Materials, Licensed Technology and the Licensed Patents in the Field of Use in the Licensed Territory during the term of this Agreement. For the avoidance of doubt, the grant herein to use the Licensed Materials

shall not mean the inclusion of the materials, protein products, or oligonucleotides, or peptides having sequences homologous to the Licensed Materials or fragments thereof, or in the case of nucleic acids, homologous to complementary sequences thereof in any products identified or produced as a result of using the Licensed Materials. LICENSEE may not distribute the Licensed Materials or any other materials derived from the Licensed Materials that infringe the claims of the Licensed Patents to any third party, other than LICENSEE Affiliates, without the express written consent of LICENSOR.

2.2 No Implied License. The license and rights granted in this Agreement shall not be construed to confer any rights upon LICENSEE by implication, estoppel, or otherwise as to any technology not specifically identified in this Agreement as Licensed Patents, Licensed Technology or Licensed Materials.

2.3 Government Rights. The license granted in Section 2.1 above is conditional upon and subject to the U.S. Government Licenses and other rights retained by the United States in inventions developed by nonprofit institutions with the support of federal funds. These rights are set forth in 35 USCA §201 et seq. and 37 CFR 401 et seq., which may be amended from time to time by the Congress of the United States or through administrative procedures. If the United States government should take action which renders it impossible or impractical for LICENSOR to grant the rights and license granted herein to LICENSEE under this Agreement or otherwise perform LICENSOR's obligations under this Agreement, LICENSOR or LICENSEE may terminate this Agreement immediately by notice to the other party.

ARTICLE 3. PAYMENTS

3.1 LICENSEE shall, within thirty days after the execution of this Agreement, pay LICENSOR the sum of Fifty Thousand (\$50,000.00) Dollars for a fully paid-up license as granted

in Section 2.1. No further payments shall be due even upon commercialization of any product identified or developed using the Licensed Materials or Licensed Technology. LICENSOR shall deliver to LICENSEE, immediately after payment of the above amount by LICENSEE, the Licensed Materials in the amounts of at least one microgram of the human proline transporter cDNA and at least one confluent flask of HEK-293 cells expressing the human proline transporter cDNA as well as information containing the specifications of the Licensed Materials. If the delivered Licensed Materials do not meet the requirements stated on the specifications, LICENSOR shall within thirty (30) days of notification of such by LICENSEE provide a second lot of the Licensed Materials at no additional charge.

3.2 LICENSOR shall use reasonable efforts to assure that Randy D. Blakely, Ph.D., now an employee of Vanderbilt, provides reasonable assistance to LICENSEE pertaining to the use of the Licensed Materials and Licensed Technology. However, LICENSEE acknowledges that if such assistance requires substantial time, it may be necessary for LICENSEE to make arrangements to retain Randy Blakely, Ph.D. as a consultant on mutually agreeable terms.

ARTICLE 4. CONFIDENTIALITY

4.1 LICENSEE shall not, without the express written consent of LICENSOR, for any reason, at any time either during or subsequent to the term of this Agreement, distribute, outside of LICENSEE and its Affiliates, any Licensed Materials or Licensed Technology or any other materials derived from the Licensed Materials that infringe the claims of the Licensed Patents, or disclose, outside of LICENSEE and its Affiliates, any unpublished information disclosed in the Licensed Technology to LICENSEE for a period of seven (7) years from the Effective Date. This obligation of nondisclosure shall not extend to information:

(a) which LICENSEE or its Affiliates can demonstrate through documentation to have been within LICENSEE's or its Affiliate's legitimate possession prior to the time of disclosure of such information to LICENSEE;

(b) which was in the public domain prior to disclosure to LICENSEE or its Affiliates, as evidenced by documents published prior to such disclosure;

(c) which, after disclosure to LICENSEE, comes into the public domain through no fault of LICENSEE or its Affiliates ;

(d) which is disclosed to LICENSEE by a third party having legitimate possession of the information and the unrestricted right to make such disclosure to the best of LICENSEE's or its Affiliate's knowledge; and

(e) which is independently developed by LICENSEE or its Affiliates without the aid, application, or use of the Information disclosed hereunder; or

(f) which is required to be disclosed by law, regulation, or government authority, provided that LICENSEE or its Affiliate provides LICENSOR with notice of such requirement.

4.2 Prior Agreements. The provisions of this Agreement supersede and shall be substituted for any terms of any prior confidentiality agreement between LICENSEE and EMORY and/or DUKE, and relating to the Licensed Materials and Licensed Technology that are not consistent with this Agreement.

ARTICLE 5. INTELLECTUAL PROPERTY RIGHTS

5.1 Use of Licensed Materials and Technology. LICENSEE shall retain all research, commercial or other rights and interests in any and all screened compounds or drugs developed using the Licensed Materials and Licensed Technology. LICENSEE shall not, however, have the

right to make, use or sell as therapeutics, the Licensed Materials or confidential Licensed Technology provided hereunder, their protein products, or oligonucleotides, or peptides having sequences homologous to the Licensed Materials or confidential Licensed Technology or fragments thereof, or in the case of nucleic acids, homologous to complementary sequences thereof. LICENSEE agrees to use the Licensed Materials in compliance with all applicable statutes and regulations including, for example, those relating to research involving the use of animals or recombinant DNA

ARTICLE 6. MERCHANTABILITY AND EXCLUSION OF WARRANTIES

LICENSEE possesses the necessary expertise and skill in the technical areas in which the Licensed Materials and Licensed Technology are involved to make, and has made its own evaluation of the capabilities, safety, utility, and commercial application of the Licensed Materials and Licensed Technology. ACCORDINGLY, LICENSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING THE VALIDITY AND ENFORCABILITY OF THE LICENSED PATENTS WITH RESPECT TO THE LICENSED MATERIALS AND LICENSED TECHNOLOGY AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTIES WITH RESPECT TO THE CAPABILITIES, SAFETY, UTILITY, OR COMMERCIAL APPLICATION OF LICENSED MATERIALS AND LICENSED TECHNOLOGY.

LICENSOR represents, however, that as of the Effective Date, to the best of its knowledge, the practice of the Licensed Patents, Licensed Technology and the use of the Licensed Materials does not infringe on the rights of third parties.

ARTICLE 7. INDEMNIFICATION

Indemnification. LICENSEE shall defend, indemnify, and hold harmless the Indemnities, from and against any and all claims, demands, loss, liability, expense, or damage (including investigative costs, court costs and attorneys' fees) Indemnities may suffer, pay, or incur as a result of claims, demands or actions against any of the Indemnities arising or alleged to arise by reason of, or in connection with any claim including but not limited to any and all personal injury (including death) and property damage caused or contributed to in whole or in part by LICENSEE's or LICENSEE's Affiliates', employees', contractors', or agents' use or practice of any Licensed Materials or Licensed Technology, including without limitation the use, handling, storage, transportation, disposition and containment of the Licensed Material and any products thereof. LICENSEE's obligations under this Article shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 8. TERM AND TERMINATION

8.1 Term. Unless sooner terminated as otherwise provided in this Agreement, the term of this Agreement shall commence on the date hereof and shall continue for a period of ten (10) years from the Effective Date.

8.2 Termination. LICENSOR shall have the right to terminate this Agreement upon the occurrence of anyone or more of the following events:

- (a) failure of LICENSEE to make any payment required pursuant to this Agreement when due; or
- (b) the insolvency of LICENSEE; or
- (c) the institution of any proceeding by LICENSEE under any bankruptcy, insolvency, or moratorium law; or

- (d) any assignment by LICENSEE of substantially all of its assets for the benefit of creditors; or
- (e) placement of LICENSEE's assets in the hands of a trustee or a receiver unless the receivership or trust is dissolved within thirty (30) days thereafter; or
- (f) the breach by LICENSEE or its Affiliate of any other material term of this Agreement.

8.3 Exercise. If LICENSOR exercises its right of termination, LICENSOR shall give LICENSEE, its trustees or receivers or assigns, thirty (30) days' prior written notice of LICENSOR's election to terminate. Upon the expiration of such period, this Agreement shall automatically terminate unless LICENSEE has cured the breach. Such notice and termination shall not prejudice any cause of action or claim of LICENSOR accrued or to accrue on account of any breach or default by LICENSEE.

8.4 Failure to Enforce. The failure of LICENSOR at anytime, or for any period of time, to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provisions or as a waiver of the right of LICENSOR thereafter to enforce each and every such provision.

8.5 Termination by LICENSEE. LICENSEE shall have the right to terminate this Agreement upon the breach of a material term of this Agreement by LICENSOR. LICENSEE shall not have any right to the return of any payments of any kind made by it to LICENSOR prior to the date of such termination.

8.6 Exercise. LICENSEE may exercise its right of termination based upon a material breach of this Agreement by LICENSOR by giving LICENSOR thirty (30) days prior

written notice of LICENSEE's election to terminate. Upon the expiration of such period, this Agreement shall automatically terminate unless LICENSOR has cured the breach. Such notice and termination shall not prejudice LICENSEE's right to pursue any other remedies available to LICENSEE at law.

8.7. Effect. In the event this Agreement is terminated by LICENSOR pursuant to Section 8.2, LICENSEE shall return, or at LICENSOR's direction destroy, samples of the Licensed Materials and confidential Licensed Technology, retaining no copies, and shall refrain from using or publishing any portion of the Licensed Materials or Licensed Technology as provided in Article 4 of this Agreement. The provisions of Articles 4, 5, 6 and 7 of this Agreement shall survive any termination of this Agreement.

ARTICLE 9. ASSIGNMENT

LICENSEE shall not grant, transfer, convey, or otherwise assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of LICENSOR, which consent shall not be unreasonably withheld, except if such assignment occurs in connection with the sale of all or substantially all of the business and assets of LICENSEE. No assignment relieves LICENSEE of responsibility for the performance of any obligations which it has accrued prior to such assignment.

ARTICLE 10. MISCELLANEOUS

10.1 Export Controls. LICENSEE acknowledges that LICENSOR is subject to United States laws and regulations controlling the export of technical data, biological materials, chemical compositions and other commodities and that LICENSOR's obligations under this Agreement are contingent upon compliance with applicable United States export laws and

regulations. The transfer of technical data, biological materials, chemical compositions and commodities may require a license from the cognizant agency of the United States government or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without the prior approval of certain United States agencies. LICENSOR neither represents that an export license shall not be required nor that, if required, such export license shall issue.

10.2 Legal Compliance. LICENSEE shall comply with all laws and regulations relating to its use or practice of the Licensed Materials or Licensed Technology and shall not take any action that would cause LICENSOR or LICENSEE to violate any laws and regulations.

10.3 Independent Contractor. LICENSEE's relationship to LICENSOR shall be that of a licensee only. LICENSEE shall not be the agent of LICENSOR and shall have no authority to act for, or on behalf of, LICENSOR in any matter. Persons retained by LICENSEE as employees or agents shall not by reason thereof be deemed to be employees or agents of LICENSOR.

10.4 Use of Names. Both LICENSEE and LICENSOR shall obtain the prior written approval of the other prior to making use of its or any of its employees' names for any commercial purpose. For avoidance of doubt, it is agreed and understood that neither party will, without the express prior written consent of the other party (and/or HHMI or VANDERBILT, as the case may be)

(a) use in advertising, publicity, press release, promotional activity, or otherwise, the name or image of the other party (or HHMI or VANDERBILT) or its (or HHMI's or VANDERBILT'S) employees or agents, any trade-name, trademark, trade device, service mark, symbol, or any abbreviation, contraction or simulation thereof owned by the other party (or HHMI or VANDERBILT); or

(b) represent, either directly or indirectly, that any product or service of the other party (or HHMI or VANDERBILT) is a product or service of the representing party or that it is made in accordance with or utilizes the information or documents of the other party (or HHMI or VANDERBILT).

10.5 Governing Law. This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the parties hereunder, shall be construed under and governed by the laws of the State of Georgia and the United States of America. Only courts in the State of Georgia, U.S.A., shall have jurisdiction to hear and decide any controversy or claim between the parties arising under or relating to this Agreement.

10.6 Entire Agreement. This Agreement constitutes the entire agreement between LICENSOR and LICENSEE with respect to the subject matter hereof and shall not be modified, amended or terminated, except as herein provided or except by another agreement in writing executed by the parties hereto.

10.7 Severability. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement, not essential to the commercial purpose of this Agreement, shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision, which shall implement the commercial purpose of the illegal, invalid, or unenforceable provision. In the event that any provision essential to the commercial purpose of this Agreement is held to be illegal, invalid or

unenforceable and cannot be replaced by a valid provision which will implement the commercial purpose of this Agreement, this Agreement and the rights granted herein shall terminate.

10.8 Force Majeure. Any delays in, or failure of performance of any party to this Agreement, shall not constitute a default hereunder, or give rise to any claim for damages, if and to the extent caused by occurrences beyond the control of the party affected, including, but not limited to, acts of God, strikes or other concerted acts of workmen, civil disturbances, fires, floods, explosions, riots, war, rebellion, sabotage, acts of governmental authority or failure of governmental authority to issue licenses or approvals which may be required.

10.9 Representations and Warranties. LICENSOR represents and warrants that it has the right to grant LICENSEE the licenses granted herein.

10.10 Status of HHMI. HHMI is a party to this Agreement and has no liability to any licensee, sublicensee, or user of any technology covered by this Agreement, but HHMI is an intended third-party beneficiary of this Agreement and certain of its provisions are for the benefit of HHMI and are enforceable by HHMI in its own name.

ARTICLE 11. NOTICES

All notices, statements, and reports required or contemplated herein by one party to the other shall be in writing and shall be deemed to have been given upon delivery in person or upon the expiration of five (5) days after deposit in a lawful mail depository in the country of residence of the party giving the notice, registered or certified airmail postage prepaid, and addressed as follows:

If to LICENSOR: Emory University
Attn: Asst. Vice President & Director
Office of Technology Transfer
1599 Clifton Road, NE
Fourth Floor
Atlanta, Georgia 30322

If to LICENSEE: _____

Attn: _____

Either party hereto may change the address to which notices to such party are to be sent by giving notice to the other party at the address and in the manner provided above. Any notice herein required or permitted to be given may be given, in addition to the manner set forth above, by telex, facsimile or cable, provided that the party giving such notice obtains acknowledgement by telex, facsimile or cable that such notice has been received by the party to be notified. Notice made in this manner shall be deemed to have been given when such acknowledgement has been transmitted.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, LICENSOR and LICENSEE have caused this Agreement to be signed by their duly authorized representatives, under seal, as of the day and year indicated above.

EMORY UNIVERSITY:

LICENSEE , INC.

By: _____

By: _____

Name: Todd T. Sherer
Title: Asst. Vice President and Director
Office of Technology Transfer

Printed Name: _____
Title: _____

Date: _____

Date: _____

DUKE UNIVERSITY

By: _____

Name: Rose Ritts, Ph.D.
Title: Executive Director
Office of Licensing & Ventures

Date: _____